

BEFORE THE BOARD OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

IN THE MATTER OF APPLICATION FOR
RESERVATION OF WATER OF THAT PORTION
OF NORTH CUSTER CONSERVATION DISTRICT
APPLICATION NO. 9947-r42M DEALING
WITH INSTREAM FLOW

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)
) FINDINGS OF FACT AND CON-
) CLUSIONS OF LAW OF APPLI-
) CATION NO. 9947-r42M
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The above-entitled matter came on regularly for hearing starting on or about September 8, 1977, in Billings, Montana, before the Montana Board of Natural Resources and Conservation and its duly appointed Hearing Examiner, James Driscoll. The Applicant appeared by and through its counsel of record, Gary Spaeth. The Montana Department of Natural Resources and Conservation appeared by and through its counsel of record, Richard Gordon. The Montana Department of Health and Environmental Sciences appeared by and through its counsel of record, Mona Jamison. The Montana Department of Fish and Game appeared by and through its counsel of record, F. Woodside Wright and Clayton Herron. Utah International Inc. appeared by and through its counsel of record, Urban Roth. The Montana Power Company appeared by and through its counsel of record, Robert Woodahl. Intake Water Company appeared by and through its counsel of record, Henry Loble. The Montana Wildlife Federation appeared by and through its counsel of record, William Madden. Trout Unlimited and the Federation of Fly Fisherman appeared by and through their counsel of record, James Goetz. The Environmental Information Center appeared by and through its counsel of record,

William Leaphart, Jr. Witnesses were duly sworn, and oral and documentary evidence was introduced.

The Board, having read and fully considered the complete record, makes the following Findings of Fact and Conclusions of Law relating to the portion of the North Custer Conservation District, Application No. 9947-r42M for instream flow:

FINDING OF FACTS

1. The North Custer Conservation District has applied for a minimum-flow instream reservation of 4,000 cubic feet per second (cfs) for the mainstem of the Yellowstone River at the Kinsey #1 pumping station (North Custer Conservation District, Application No. 9947-r42M, p.7).

Findings Related to the Purpose of the Reservation (89-890(3)(a))

2. The purpose of the reservation is to maintain a minimum flow at the Kinsey #1 pumping station during the irrigation season in order to help prevent increased pumping costs due to low water levels (North Custer Conservation District, Application No. 9947-r42M, p. 7).

3. It is established to the satisfaction of the Board that a purpose of the reservation has been shown.

Findings Related to the Need for the Reservation (89-890(3)(b))

4. A reservation of water is needed because it will secure a priority date for future developments that is earlier than the priority dates such developments would have if permits were obtained immediately before construction or use began (North Custer Conservation District, Application No. 9947-r42M, p. 7).

5. A reservation of water is needed because there is competition for water in the Yellowstone Basin which may affect the ability of the Applicant to obtain a water right by permit in the future (North Custer Conservation District, Application No. 9947-r42M, p.2).

6. Existing pumping plants need a specific minimum water level to operate efficiently (North Custer Conservation District, Application 9947-r42M, p.7).

7. It is established to the satisfaction of the Board that a need for a minimum-flow instream reservation has been shown by the North Custer Conservation District.

Findings Related to the Amount of Water Necessary for the Purpose of the Reservation (89-890 (3) (c)).

8. August and September are generally the critical months for irrigation water supply in the lower Yellowstone River (Draft EIS, Vol. II, p.277).

9. The U.S.G.S. stream gauge at Miles City is less than 10 miles upstream from the Kinsey #1 pumping station. No large inflow or diversion is apparent in the reach of the river between the gauging and pumping stations (Draft EIS, Vol. I, p. 47).

10. An instream reservation of the eightieth percentile flow less depletions has been granted to the Department of Health and Environmental Sciences and the Commission of Fish and Game for the Yellowstone River at Miles City (Board Order #)

11. The instream reservation mentioned in Finding #13 is sufficient to satisfy the need and the purpose of the instream request of the North Custer Conservation District..

12. It is established to the satisfaction of the Board that the amount of water necessary for the purpose of the instream reservation of the North Custer Conservation District is 4000 cubic feet per second (cfs) and that the reservation is to be concurrent with the instream reservations of the Department of Health and Environmental Sciences and the Commission of Fish and Game in the Yellowstone River at Miles City.

Findings Related to the Public Interest (89-890(3)(d))

13. An instream reservation of 4000 cfs would provide adequate water to properly operate the pumps at the Kinsey #1 pumping station (North Custer Conservation District Application No. 9947-r42M)

14. Without an instream reservation to provide an adequate flow of water in the Yellowstone River it is possible that the North Custer Conservation District would either have to replace the pumps at the Kinsey #1 pumping station or abandon valuable irrigated land.

15. It is established to the satisfaction of the Board that an instream reservation of 4000 cfs of the flow of the Yellowstone River at the Kinsey #1 pumping station is in the public interest.